

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ADAM, Minors.

UNPUBLISHED

October 15, 2013

No. 313884

Clare Circuit Court

Family Division

LC No. 11-000253-NA

Before: HOEKSTRA, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court's order terminating her parental rights to her three minor children pursuant to MCL 712A.19b(3)(b) (failure to protect child from physical or sexual abuse), (3)(g) (failure to provide proper care and custody), and (3)(j) (reasonable likelihood of harm if child is returned to parent's home). For the reasons stated in this opinion, we affirm.¹

Petitioner filed its original petition on November 2, 2011, after the oldest daughter, H.A., reported to her English teacher that she had been sexually abused by her father. The petition sought termination of the parental rights of both parents. All three children were removed from the home on that date. On January 18, 2012, respondent admitted allegations identified in an amended petition, including acknowledging that H.A. had been physically abused by her father and that respondent was aware that H.A. had experienced sexual relations with a number of underage males, but despite this awareness, respondent did not contact police or do anything else substantial. Respondent asserted that she was unaware of any sexual abuse by her husband.

Respondent was offered a service plan and petitioner made efforts to reunite her with her children. However, the foster care worker and respondent's counselor both testified that over the course of the next nine months, respondent's improvement in parenting was minimal and she was not substantially benefiting from counseling. After petitioner learned that more sexual abuse had occurred in the home and that respondent had been aware of it at least to the extent that she should have investigated, a supplemental petition was filed seeking termination of respondent's

¹ The rights of the father ultimately were terminated by release and are not a subject of this appeal.

parental rights. A permanency planning hearing, dispositional review hearing, and pretrial were noticed for October 30, 2012. However, no record was made of the proceedings.

The court entered two orders on October 30, 2012. The order identified as following dispositional review indicated that efforts for reunification should continue and that progress was being made. The order did not provide that proceedings to terminate should be initiated. The order identified as following pretrial indicated that efforts to reunify should continue, but that a termination hearing would be held on December 6, 2012. The termination hearing was held as scheduled, and respondent was present and was represented. The Child Protective Services worker who filed the initial petition, respondent's counselor, and the foster care worker testified. In addition, the court took judicial notice of respondent's psychological evaluation, as well as all earlier proceedings, including the father's jurisdiction jury trial at which H.A. testified.

At the conclusion of the hearing, the court issued its opinion from the bench. The court cited at length the psychological report. The report concluded that insight-oriented therapy was unlikely to be beneficial and that the likelihood of respondent being able to make needed changes to facilitate reunification was marginal. The report further concluded that it was highly unlikely that the children would be safe with their mother even after services. The court found the jurisdictional grounds were met and that the conditions that led to the petition being filed were not likely to be remedied within any reasonable time frame, possibly a number of years. The court also found that termination was in the best interests of the younger two children, who were happy and thriving together in their foster home. The court noted that H.A.'s situation was more difficult because the court expected she would go back to her mother upon reaching majority, which would occur within the year. However, the court did not want to encourage H.A. to go back to her mother, and found it in her best interest to have the stability that continued placement would give her. Accordingly, the court terminated respondent's parental rights to all three minor children.

On appeal, respondent argues that the trial court did not substantially comply with either MCL 712A.19a(6) or MCR 3.976 because it failed to hold a permanency planning hearing on the record, thereby undermining her fundamental right to care for her children. She also argues that the treatment plan petitioner developed was ineffective for her, and doomed her reunification from the start. She asserts that the December 6, 2012, termination hearing was her first opportunity to challenge the witness reports against her and that, had a permanency planning hearing been conducted, the insufficiency of petitioner's treatment plan and its inability to rectify the conditions that led to adjudication would have been revealed earlier.

In an action to terminate parental rights, the petitioner must prove by clear and convincing evidence that at least one statutory ground for termination exists. MCR 3.977(A)(3) and (H)(3); *In re Trejo*, 462 Mich 341, 355-356; 612 NW2d 407 (2000). We review the trial court's decision for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357. The trial court's best interest determination is also reviewed for clear error. MCR 3.977(K). A finding is clearly erroneous when the reviewing court "is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Respondent argues that petitioner's and the trial court's errors affected her fundamental liberty interest and right to procedural due process. We review de novo such constitutional questions, as well as issues of statutory interpretation and family division procedures under the court rules. *In re*

Rood, 483 Mich 73, 91; 763 NW2d 587 (2009); *In re Van Dalen*, 293 Mich App 120, 132; 809 NW2d 412 (2011). However, because no objection was made in the trial court regarding the alleged procedural defects, the matter is not properly preserved for appellate review and we review respondent's claim for plain error. *Van Dalen*, 293 Mich App at 135. "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id.* (quotation marks and citations omitted).

Further, we note that this Court has previously recognized that procedural defects do not require reversal in all circumstances. In *In re Utrera*, 281 Mich App 1, 13-14; 761 NW2d 253 (2008), this Court declined to find error requiring reversal despite the trial court's failure to comply with the time limit set forth in MCR 3.972(A). This Court emphasized that the court rule and the applicable statute provide no sanctions for violation. *Id.* at 13. This Court noted that procedural defects, standing alone, do not require that a termination order be set aside. *Id.* at 14. See also *In re Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1993) (holding that failure to follow time requirements set forth by the court rules will not lead to dismissal of a termination order). In *In re Ward*, unpublished opinion per curiam of the Court of Appeals, issued February 16, 2012 (Docket No. 305633),² this Court found that the trial court's failure to conduct a permanency planning hearing or obtain the opinion of the children before the petitioner submitted a supplemental petition to terminate the respondent's parental rights did not require reversal of the trial court's termination order. Specifically, this Court found that reversal was not warranted because the respondent did not demonstrate that the failure to hold a permanency planning hearing affected his substantial rights in light of the fact that the evidence demonstrated that the trial court was aware of the children's views regarding the permanency plan and because the trial court did not clearly err by determining that termination was in the children's best interests.

Similarly, in this case, we conclude that respondent has failed to prove that any procedural error affected her substantial rights. Although the lack of a record of the permanency planning hearing makes any review of that event impossible, that failure did not affect respondent's substantial rights, and would not have done so even if the court had completely failed to hold the hearing. MCL 712A.19b(1) indicates that a trial court shall hold a hearing on a petition to terminate parental rights "if a child remains in foster care in the temporary custody of the court following a review hearing under section 19(3) of this chapter or a permanency planning hearing under section 19a of this chapter." Respondent does not dispute that review hearings had been held while the children remained in the custody of the court. While MCL 712A.19a(3) requires the court conducting the permanency planning hearing to "obtain the child's views regarding the permanency plan in a manner that is appropriate to the child's age," the record shows that the court knew the views of the children because by that time it had several reports from petitioner describing how the children reacted to respondent's visits and how the

² "An unpublished opinion is not precedentially binding under the rule of stare decisis." MCR 7.215(C)(1). However, unpublished opinions can be instructive or persuasive. *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136 n 3; 783 NW2d 133 (2010).

younger two loved their foster home, called the foster mother “mom,” and did not want to participate in visitation with respondent. The court was also aware that H.A. struggled not to assume the role of the parent when she was with her mother, and it was also aware of the conflict H.A. had about living in respondent’s home. Moreover, all the necessary findings and determinations were made on the record during the termination hearing.

Respondent does not identify what petitioner should have done differently with regard to her case service plan. In any event, the psychological report and the testimony showed that there was nothing that could be done to enable respondent to learn how to protect herself and children within a reasonable time, considering the ages of the children. Further, the testimony presented at the termination hearing sufficiently supported the trial court’s findings that the statutory grounds for termination were proved by clear and convincing evidence and that under MCL 712A.19b(5) termination of respondent’s parental rights was in the children’s best interests. We cannot conclude that those findings were clearly erroneous. Accordingly, respondent has failed to demonstrate that any error affected her substantial rights.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra